

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 637 of 2008**

- Lokesh Kumar Patel, S/o Roop Singh Patel, Aged about 27 years, R/o Village Ghatula, P.S. - Sihawa, Dist : Dhamtari -(C.G.)

---- Appellant**Versus**

- State of Chhattisgarh, Through P.S. - Sihawa, Dist : Dhamtari - (C.G.)

---- Respondent

For Appellant	: Mr. Arun Shukla, Advocate.
For Respondent/State	: Mr. Sameer Sharma, Deputy Govt. Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****04/11/2020**

01. The matter is heard through Video Conferencing.
02. This appeal arises out of the judgment of conviction and order of sentence dated 25th June, 2008 passed by Special Judge (Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, District Dhamtari in Special Sessions Trial No. 22/2006, convicting the accused/appellant for the offence punishable under Section 363 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment of three years with fine of Rs.500/-, in default of payment

of fine to further undergo simple imprisonment of two months.

03. Case of the prosecution, in brief, is that on 29.10.2005 at about 10.00 pm at village Ghatula P.S. Sihava when prosecutrix was sleeping in her house alongwith her grand mother Barmat Bai, accused / appellant entered into her house and caught hold of her hand and when prosecutrix cried for help, accused gagged her mouth and took her away on the bicycle on the threat of life and thereafter took her away at village Devdongar Ghatula. While she was harvesting the paddy crop in the field, the villagers came there to whom the prosecutrix narrated the entire incident and thereafter they took the prosecutrix and the accused/appellant back to village- Ghatula. The prosecutrix informed about the incident to her parents, grand-parents and other villagers and thereafter she lodged a FIR (Ex. P/3) on 05.11.2005 at Police Station- Sihava relating to offences punishable under Sections 366, 363, 452, 506 & 323 of the Indian Penal Code and Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act,). Birth certificate (Ex. P/5-A) of the prosecutrix was seized from the Kotwar vide Ex. P/4, in which the date of birth of the prosecutrix was mentioned as 1.9.1989. Rajauram (PW-8) - Patwari prepared spot map vide Ex. P/7. Another spot map was prepared by Investigating Officer S.K. Mulkalwar (PW-14) vide Ex. P-10 while investigating the offences as alleged. The prosecutrix was medically examined by Dr. Ramesh Thakur (PW-9) vide Ex. P/8 wherein the doctor noticed tenderness over right hand wrist with contusion mark. The injury was simple in nature due to compression and caused by hard & blunt object which

was 2-3 days old. Seizure memo Ex.P/11 was prepared whereby bicycle was seized and the caste certificate of the prosecutrix was also seized vide P/12.

04. After usual investigation, charge-sheet was filed against the accused/appellant under Sections 363, 366, 452, 506 & 323 of the Indian Penal Code & Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Thereafter, the trial Court framed charge under Sections 456, 506(B), 323, 363, 366 & Section 3(1)(xi) & 3 (2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against the appellant which were denied by him and he prayed for trial.

05 So as to hold the accused/appellant guilty, the prosecution examined as many as 14 witnesses namely- Barmat Bai (PW-1), Somnath (Caste Kanwar) (PW-2), prosecutrix (PW-3), father of the prosecutrix (PW-4), mother of the prosecutrix (PW-5), Dheerij (PW-6), Sagardas (PW-7), Rajauram (PW-8), Dr. Ramesh Thakur (PW-9), Tameshwar Baghel (PW-10), Brajlal Mandavi (PW-11), J.R. Bariha (PW-12), R.K.S. Jaisindhu (PW-13) and S.K. Mulkalwar (PW-14). Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and took a specific defence that he has been falsely implicated in the crime in question due to previous enmity. However, no defence witness has been examined on behalf of accused/appellant.

06 The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in the second paragraph of this judgment.

07 Learned counsel for the appellant submits that prosecutrix is a major girl, aged about 21 years; she is consenting party to the act of accused/applicant. He submits that prosecutrix (PW-3) herself has admitted in paragraph 2 of her statement made before the Court that she was 18 years of age at the time of incident *and* father of the prosecutrix (PW04) has also admitted in paragraph 2 of his statement that her daughter was aged about 18 - 19 years at the time of incident. He further submits that mother of the prosecutrix (PW-5) has also admitted in her evidence that her daughter was aged about 19 years at the time of incident and the aforesaid statements of the prosecutrix as well as her father & mother are uncontroverted in their cross-examination, therefore, it is clear from the statements of aforesaid witnesses that the prosecutrix is a major girl and she was not below the age of 18 years at the time of incident and, therefore, the appellant is entitled to be acquitted of the charges as alleged by the prosecution.

08 On the other hand, learned counsel for the State while supporting the impugned judgment submits the conviction of the appellant is based on proper appreciation of the evidence available on record and, as such, there is no scope for interference in the judgment impugned.

09 I have heard learned counsel appearing for the parties and perused the material available on record.

10 Sagardas (PW-7) - Kotwar has stated in his evidence that as per *Kotwari Panji* the date of birth of prosecutrix is 11.09.1989 but the said date was disclosed by uncle & aunt of the prosecutrix and not by her parents. However, the said uncle & aunt were not examined before the Court and no any documentary evidence was adduced to prove the date of birth of the prosecutrix. There is no evidence adduced by the prosecution as on what basis the said date of birth was mentioned by the uncle & aunt of the prosecutrix.

11 The prosecutrix (PW03) has stated in paragraph 2 of her deposition that she was 18 years at the time of incident. Father of the prosecutrix (PW04) has also admitted in para 2 that her daughter /prosecutrix was 19 years of age likewise mother of the prosecutrix (PW05) has also admitted in para 1 of her evidence the prosecutrix was 19 years of age. The aforesaid evidence has remained uncontroverted in the cross-examination. Therefore, considering the overall evidence on record with regard to age of the prosecutrix it stands prove that she was not below the 18 years of age.

12 Prosecutrix (PW03) has stated that on the date of incident while she was sleeping with her grand-mother, the accused/appellant came there and took her forcibly on the threat of life on bicycle to Devdongar. She admits that she remained with the appellant for 8 days. In paragraph 3 of her statement she admits that on the date of incident when the appellant came to her house, her grand mother woke-up and switched on the light and due to fear she alongwith the accused/appellant ran away from there through bicycle to Dabarpani.

She admits in paragraph 5 while she was going with the appellant on bicycle she was not raised any hue and cry and she not raised state of the appellant in any manner. In paragraph 6 she admits that while they were living in Dabrapani, her uncle and other villagers came there to take her back but she refused to go back and when her uncle told her that she would be married with the appellant, she came back with them. She further admits that on the pressure of her family members only she lodged report against the appellant.

13 Mother of the prosecutrix (PW05) has admits in her cross-examination that after returning the prosecutrix told her she went with the appellant of her own free will.

14 Brajlal Mandavi (PW-11) has admits in paragraph 3 of his cross-examination that the prosecutrix had expressed her willingness to live with the appellant as husband and wife.

15 Thus, considering the overall evidence available on record in particular the statement of the prosecutrix it is evident that she accompanied the appellant of her own free will and as such she was a consenting party to the act of the appellant further the prosecution has not proved beyond reasonable doubt that on the date of incident the prosecutrix was below 18 years of age whereas according to the prosecutrix and her parents she was 18-19 years of age on the date of incident. In these circumstances it cannot be held that the prosecution has proved the guilt of the appellant under Section 363 of IPC beyond all reasonable doubt.

16 Accordingly, the appeal is allowed. Impugned judgment dated

25th June, 2008 convicting and sentencing the appellant is set aside and the appellant is acquitted of the charge framed against him. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C. Fine amount, if any, deposited shall be refunded to the accused/appellant.

Sd/-

(Gautam Chourdiya)

Judge

Amita